

Instructions for Completing the CJA Form 20:

**APPOINTMENT OF AND AUTHORITY TO PAY
COURT APPOINTED COUNSEL**

For CJA Attorneys Appointed in the

**UNITED STATES DISTRICT COURT
District of Minnesota**

c/o Federal Defender Office
Suite 107, U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
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GENERAL INFORMATION

This instruction manual was prepared by the Federal Public Defender's Office (FPD) to help Criminal Justice Act (CJA) panel attorneys in the District of Minnesota understand their obligations and rights on appointed cases. The contents of this manual are intended solely as a guide. It refers to sections of the *Guide to Judiciary Policies and Procedures*, the Criminal Justice Act, and other applicable statutory provisions. The Guidelines for the Administration of the Criminal Justice Act, 18 U.S.C. § 3006A, are available to CJA attorneys at www.fd.org. Updates to those sources will prompt revisions to this manual. In the event of a contradiction, the statutory authority prevails and panel attorneys are instructed to contact the FPD Office before taking action pursuant to that provision.

SUBMISSION OF VOUCHERS FOR PAYMENT

Vouchers should be completed and submitted as soon as possible after the case is completed at the district court level. Submit to:

Federal Public Defender
Suite 107 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415-1329

Regulations in the *Guide to Judiciary Policies and Procedures* (hereinafter referred to as the *Guide*), (Vol VII, Part A, Chapter 2, ¶ 2.21), state "Vouchers shall be submitted no later than 45 days after the final disposition of the case, unless good cause is shown." Claims submitted outside the 45 day period should include a separate statement outlining the reasons for the delay.

There are several attachments to the CJA Form 20 that must accompany each claim by appointed counsel. Counsel may submit only one copy of all attachments to the CJA Form 20.

No appointed attorney shall accept a payment from or on behalf of the person represented without Court approval on CJA Form 7. See *Guide*, Vol VII, Part C, ¶ 2.22(E).

JUSTIFICATION STATEMENTS

A justification statement must be attached to the voucher if the amount of compensation being claimed (excluding expenses) exceeds the statutory limits set forth in 18 U.S.C. § 3006A:

Statutory Limits		Current*	11/13/2000 to 12/7/04	Prior to 11/13/2000
Felony	--	\$7,000	\$5,200	\$3,500
Appeal	--	\$5,000	\$3,700	\$2,500
Misdemeanor	--	\$2,000	\$1,500	\$1,000
Other Cases	--	\$1,500	\$1,200	\$750

*Current limits apply to cases in which a portion of the services took place on or after 12/8/04.

Instructions for completing a justification statement are at the end of this manual.

REVIEW PROCESS

Upon submission to the Federal Public Defender's (FPD's) Office, the claim is reviewed for mathematical accuracy and for technical compliance with the CJA Guidelines. Then, if there are no problems to be corrected, a cover letter is prepared and the claim is submitted to the U.S. District Judge assigned to the case. The award determination is made by the Court and the claim is returned to the FPD's Office. If the claim was for over the statutory limit, the claim is also sent to the Eighth Circuit for consideration and signature by the Chief Judge or his delegate. Once the completed voucher is received back in the FPD's Office, the data related to the appointment and claim is entered by the FPD's Office into the electronic CJA Payment System. The data is further verified by a designated employee of the Clerk of Court's Office and the check is printed at the Disbursing Office, Administrative Office, Washington, D.C., and mailed to appointed counsel.

CJA FORM 20

Following are instructions for completing specific portions of the CJA Form 20 APPOINTMENT OF AND AUTHORITY TO PAY COURT APPOINTED COUNSEL. Please note that these instructions pertain only to claims filed as a result of representation at the federal district court level.

PERSONAL APPOINTMENTS

All attorneys appointed under the Criminal Justice Act are appointed personally and individually. Payment on a CJA claim is made to the *individual attorney* rather than to the firm or organization with which the attorney is associated. Co-counsel or associate attorneys may not be compensated under the Act. However, an appointed counsel may claim compensation for services furnished by a partner or associate or, with prior authorization by the court, counsel who is not a partner or associate, within the maximum compensation allowed by the Act, separately identifying the provider of each service (ex. an associate covers a court appearance appointed counsel is unable to attend). See *Guide*, Vol VII, Chapter 2, ¶ 2.11.

SOCIAL SECURITY NO./EMPLOYER ID NO.

The Administrative Office (AO) has made provisions for reporting CJA income as firm income rather than personal income of the attorney. The financial relationship of the attorney with the firm dictates how the income should be reported.

Your income will be reported to the IRS using your Social Security Number or the firm's tax ID number pursuant to the written form submitted by you at the time of the last panel revision. If your tax reporting status should change, call the FPD Office for instructions on updating your status.

The tax reporting information will not print on the face of the CJA voucher.

IN- AND OUT-OF-COURT TIME--General Information

All attorney time must be reported in tenths of hours.

Counsel must attach an itemization of in- and out-of-court time which lists the dates on which services were performed, a brief description of the type of service, and the amount of time expended. You may use the worksheets attached to the back of this instruction guide or your own timesheets. However, if using your own timesheets, please highlight or list separately the in-court time.

IN-COURT TIME (Lines 15 a - h)

In-court time directly related to the district court case may be claimed in this portion of the form. In-court time means only time spent at court appearances. Time spent conferring with the judge in chambers, meeting with the client, awaiting a jury verdict, etc., should be claimed as out-of-court time. Subsections A-H must be completed on the face of the voucher.

Rates:	\$92.00/hour	Time on or after 1/1/2006
	\$90.00/hour	Time 5/1/2002 to 12/31/2005
	\$75.00/hour	Time 4/1/2001 to 4/30/2002
	\$70.00/hour	Time 1/1/2000 to 3/31/01
	\$65.00/hour	Time 1-1-96 to 12-31-99
	\$60.00/hour	Time prior to 1-1-96

OUT-OF-COURT TIME (Lines 16 a - e)

Out-of-court time expended in relationship to the case may be claimed. The period for which time may be claimed includes the interval between and including the date of the appointment (indicated in Box 13) and the conclusion of the district court case. Subsections 16 A-E should be completed on the face of the voucher. Leave the column marked "Math/technical review" blank.

You may claim compensation for time spent in necessary travel. Allowable time for travel includes hours spent in or awaiting transit.

Rates:	\$92.00/hour	Time on or after 1/1/2006
	\$90.00/hour	Time 5/1/2002 to 12/31/2005
	\$55.00/hour	Time 4/1/2001 to 4/30/2002
	\$50.00/hour	Time 1/1/2000 to 3/31/01
	\$45.00/hour	Time 1-1-96 to 12-31-99
	\$40.00/hour	Time prior to 1-1-96

EXPENSES (Blocks 17-18)

All vouchers should be accompanied by an itemization of expenses (whether on the worksheet provided at the end of this instruction guide or on a separate attachment) that details the date, type of expense and amount. Attach receipts for any expense in excess of \$50. Receipts should be marked "Paid--Check No. _____" by you.

Travel expenses--Box 17 (see enclosure for information on government travel rates for airfare)
Mileage, parking, lodging, meals (only if overnight stay was required), car rental, etc. Counsel should be governed by prevailing limitations placed on travel expenses of federal judiciary employees.

Travel by Personal Automobile – government rates apply:

<u>Date Travel Occurred</u>	<u>Reimbursable Amount</u>
January 1, 2006 to present	\$0.445/mile
September 1, 2005 to December 31, 2005	\$0.485/mile
February 4, 2005 to August 31, 2005	\$0.405/mile
January 1, 2004 to February 3, 2005	\$0.375/mile
January 1, 2003 to December 31, 2003	\$0.36/mile
January 21, 2002 to December 31, 2002	\$0.365/mile
January 23, 2001 to January 20, 2002	\$0.345/mile
January 14, 2000 to January 22, 2001	\$0.325/mile
April 1, 1999 - January 13, 2000	\$0.31/mile
September 8, 1998 to March 31, 1999	\$0.325/mile
June 7, 1996 to September 7, 1998	\$0.31/mile
January 1, 1995 - June 6, 1996	\$0.30/mile
June 30, 1991 - December 31, 1994	\$0.25/mile

September 17, 1989 - June 30, 1991	\$0.24/mile
August 14, 1988 - September 17, 1989	\$0.225/mile
August 1, 1987 - August 14, 1988	\$0.21/mile
Prior to August 1, 1987	\$0.205/mile

Travel by Airplane.

Legislation has been passed which allows panel attorneys and experts to request authorization to obtain government fares for airline travel in connection with representation pursuant to the CJA. A written Travel Authorization must be obtained for each trip. Travel may be requested as follows:

1. Panel attorney provides the following information to the FPD Office:
Name of traveler, CJA voucher number, case name, criminal number, travel dates, purposes of travel, destination and estimated cost. (Cost estimate can be obtained by calling Omega Travel at 866-450-0401.)
2. FPD staff will prepare the proposed Travel Authorization document and submit it to the Court for consideration. [In the event that FPD staff is unavailable, the Accounts Custodian in the Financial Department of the Clerk of Court's Office may be contacted. Panel Attorneys should not submit requests directly to the Judge.]
3. If approved, the Travel Authorization will be provided to the FPD Office for distribution to the traveler and Omega Travel Agency. The traveler may then call Omega and advise that he/she is a panel attorney providing CJA representation and may obtain the airline ticket. Omega will bill the government (not the traveler) for the cost of the ticket. Please note that a copy of the Travel Authorization must be carried during the authorized travel.
4. Copies of airline tickets obtained pursuant to these procedures (as well as the Travel Authorization) must be attached by panel attorneys to the CJA voucher for internal control purposes. However, do not include the cost of the ticket in the amount claimed on the voucher.

Other Expenses--Box 18

1. Long distance phone charges. Calls should be itemized by date and amount.
2. Photocopy charges incurred outside of appointed counsel's office should have a receipt.
3. Photocopy charges incurred "in-house" should be itemized by date, number of copies and amount per copy.
4. Expenses related to computer assisted legal research, (LEXIS, WESTLAW) **must** be accompanied by receipts that show the method of billing and the total time spent using the computerized system. Receipts are required regardless of amount. (A statement of the issues researched and an estimate of the amount of time necessary to do the research manually may also be included.)
5. Postage or express mail expenses. Include receipts for any unusual mailings or for delivery services.
6. Fax expenses. An indication of the number of fax pages received and the cost per copy is required.
7. Hardware or Software. If hardware or software items not typically available in a law office are needed on a specific case, CJA counsel is directed that specific guidelines relate to this matter and must be followed, including notifying the Office of Defender Services. See *Guide*, Vol VII, Chapter 3, ¶ 3.16.

Non-reimbursable Expenses

The following are not reimbursable expenses, and cannot be included on the CJA 20:

1. General Office Overhead. This includes expenses which would normally be reflected in the fee charged to the client. Expenses such as personnel costs, rent, telephone services and secretarial help are not reimbursable except in extraordinary circumstances.
2. Items and Services of Personal Nature. The cost of items of a personal nature purchased for or on behalf of the client, such as new clothing, haircuts, cigarettes, candy or meals, etc. is **not** reimbursable. The cost of services such as assisting the defendant in the disposition of his or her personal property,

arranging for the placement of minor children of the defendant or assisting the defendant in executing the conditions of probation is not reimbursable.

3. Filing Fees. Attorneys should not be required to pay a filing fee in a CJA case inasmuch as such payment and reimbursement thereof is tantamount to the government billing itself to accomplish a transfer of appropriate funds into the General Fund of the Treasury. If a filing fee is paid by an attorney who is subsequently appointed in the case he or she should petition the district court for a refund of that fee.

4. Printing of Briefs is not reimbursable. However, the cost of photocopying briefs is reimbursable.

5. Service of Process. Witness fees, travel costs, and expenses for service of subpoenas on fact witnesses, are not payable out of the CJA appropriation but are governed by Rule 17, Fed. R. Crim. P. and 28 U.S.C. § 1825. The U.S. Marshals will serve subpoenas free of charge for appointed counsel if you obtain an order from the Judge or Magistrate Judge. If you hire your own investigator, they can be paid out of CJA fund for serving subpoenas only if they also interview the person served at the time of service.

6. Cost of Investigative, Expert or Other Experts allowable under 18 U.S.C. § 3006A(3). The organization or person providing the service should file a claim on a CJA Form 21.

7. Cost of Law Clerks or Paralegals. The CJA 21 procedures pertaining to experts must be followed. The use of law clerks should result in greater efficiency and lower costs for the CJA program than would occur if counsel performed the services. The Court has the power to determine whether the rate charged is reasonable. The rate may not exceed the lesser of the rate paid to counsel under the CJA or the rate typically charged by counsel to a fee-paying client for such services. *Guide*, Vol VII, Ch 3, ¶ 3.16.

8. Transcripts. Transcript costs may not be claimed on a CJA Form 20. Generally, court reporters or reporting services which furnish court authorized transcripts in CJA cases claim and receive compensation for their services on the CJA Form 24.

9. Depositions. The cost of transcribing depositions in criminal cases is the responsibility of the Department of Justice pursuant to Rule 17 of Fed. R. Crim. P. (but when witness is an expert, then the A.O. will pay out of CJA funds). 53 Comp. Gen. 638 (1974).

10. Taxes. Not reimbursable.

CERTIFICATION OF ATTORNEY/PAYEE (Box 19)

Indicate the dates between which services were performed by appointed counsel. Be sure to answer all questions in Box 22. Finally, sign and date the voucher.

Boxes 23 through 34a should be left blank as they are for the Court's use.

Make a copy of the voucher for your records prior to mailing the original to the FPD.

QUESTIONS ON PREPARATION OF VOUCHER OR ATTACHMENTS

Please direct any questions to the Federal Defender's Office (see front of this instruction book).

RECORD RETENTION

Paragraph 2.32 of the *Guide*, Vol VII, provides: "Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment."

PUBLIC DISCLOSURE OF CJA ATTORNEY PAYMENT INFORMATION

CJA documents should not be filed in the Court's Electronic Case File (ECF) System.

The Fiscal Year 1998 Judiciary Appropriations Act, Public Law 105-119, amended a provision of the Criminal Justice Act (CJA), 18 U.S.C. 3006A(d)(4) regarding disclosure of amounts paid to court appointed attorneys on cases filed on or after 1-25-1998. Regulations are also covered in the *Guide*, Vol VII, Ch 5, ¶ 5.01(b), available at www.fd.org. **Any redaction should be requested at time voucher is submitted.**

PRORATION OF CLAIMS

When a defendant is charged in one indictment with severable counts, one voucher should be submitted, whether or not the counts are severed for trial.

When a defendant is charged in two or more indictments, a separate voucher should be submitted for each indictment, whether or not the indictments are consolidated for trial. Whenever appointed counsel submit separate vouchers, time spent in common on more than one indictment or case must be prorated among the indictments or cases on which the time was spent; and each indictment or case must be cross-referenced on the vouchers. Time spent exclusively on any one indictment or case may properly be charged on the voucher for that indictment or case.

SUBSTITUTION OF COUNSEL

If an attorney is substituted for an attorney previously appointed for a defendant in the same case, the total compensation which may be paid both attorneys shall not exceed the statutory maximum for one defendant, unless the case involves extended or complex representation. In such cases, all attorney vouchers shall be submitted for approval at the same time so the Court may make such apportionment between the attorneys as may be just.

INTERIM PAYMENTS

Advance approval is required from the Court to implement interim payment procedures (such as monthly billings). If you are appointed on a lengthy case and feel interim payments may be required, please contact the Federal Defender for more information.

PACER

Public Access to Court Electronic Records (PACER) is a computer dial-in service of the federal judiciary which allows the user to access court dockets. Panel attorneys who wish to use this service in connection with their CJA appointments can obtain an exempt login and password for use by writing to: Manager, PACER Service Center, P.O. Box 780549, San Antonio, TX 78278-0549; (800) 676-6856, ext. 445.

CIVIL FORFEITURE REFORM ACT OF 2000

The Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Pub. L. No. 106-185, provides for appointment of counsel for certain claimants in judicial civil forfeiture proceedings commenced on or after 8/23/00. The Court may determine if counsel should be appointed for a person claiming an interest in seized property who is financially unable to obtain representation and who is already represented by CJA appointed counsel in a related criminal case, provided that the person has standing to contest the forfeiture and the claim appears to be made in good faith. See *Guide*, Vol VII, ¶ 2.01(6) and 18 U.S.C. § 983(b)(1).

If you feel that are grounds for appointment, please contact the Federal Defender's Office for additional instructions on how to petition the Court for appointment of counsel. A separate CJA appointment voucher is required for the forfeiture matter.

MALPRACTICE

The CJA was amended by the Federal Courts Improvement Act of 2000, Pub. L. No. 106-518, to authorize courts to reimburse panel attorneys for expenses reasonably incurred in furnishing representation services under the CJA. No reimbursement shall be made if a judgment of malpractice is rendered against the attorney furnishing the representation services. See the language in the *Guide*, Vol. VII, ¶ 2.27(D). Call the FPD's Office for more information if you find yourself in this position.

GUIDANCE TO ATTORNEYS IN DRAFTING THE MEMORANDUM REQUIRED FOR A COMPENSATION CLAIM IN EXCESS OF THE CASE COMPENSATION MAXIMUM: DISTRICT COURT

Paragraph 2.22C(2) of the *Guidelines for the Administration of the Criminal Justice Act (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, provides:

In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel shall submit with the voucher a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation.

Paragraph 2.22B(3) of the *CJA Guidelines* states that a case is complex if the "legal or factual issues. . . are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case," and that a case is extended if "more time is reasonably required for total processing than the average case". Paragraph 2.22B(3) lists the following criteria as useful in determining fair compensation in extended or complex cases: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; any extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

To assist counsel in writing a "detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation," the following topics are provided for counsel's consideration. Some of these issues may not apply to a particular case or may not be noteworthy for this memorandum. Counsel, of course, may address topics other than those listed below.

Length of appointment to case; total number of in-court hours, specifying pre-trial hearings, trial, sentencing hearings, and other; and total number of out-of-court hours.

Offense(s) charged; number of counts charged; and other pending cases of defendant during the representation.

Number of co-defendants.

The sentencing guideline range found by the court and whether a mandatory minimum was found or at issue at sentencing.

Discovery materials (nature and volume) and/or discovery practices.

Motions, legal memoranda, jury instructions, and sentencing documents, or legal research not resulting in such, which were drafted originally for this case (do not include standardized motions, etc., unless content was modified significantly).

Investigation and case preparation (e.g., number and accessibility of witnesses interviewed, record collection, document organization).

Use of investigative, expert, or other services (CJA 21 voucher).

The following client considerations: communication with client/family, language difference, accessibility of client, other.

Any expense (see Items 17 and 18 of the CJA 20 voucher) greater than \$500.

Any other noteworthy circumstances regarding the case and the representation provided to support this compensation request. Include, if applicable: negotiations with the U.S. Attorney's office or law enforcement agency; complexity or novelty of legal issues and factual complexity; responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed and knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and hardship or injury resulting from the representation; any extraordinary pressure of time or other factors under which services were rendered.

ENCLOSURE
OUT OF COURT HOURLY WORKSHEET

Page _ of _

Case Number: _____

Voucher Number: _____

Date	Brief Description of Services	Interviews and conferences	Obtaining and reviewing records	Legal research and brief writing	Travel time	Investigative and other work
	Page Total					
	Grand Total					

ENCLOSURE

OTHER EXPENSE WORKSHEET Page 1 of

Voucher Number: _____

**NOTICE TO COURT APPOINTED COUNSEL OF
PUBLIC DISCLOSURE OF ATTORNEY FEE INFORMATION**

NEW RULES APPLICABLE TO CASES COMMENCED
ON OR AFTER JANUARY 25, 1998

The Criminal Justice Act (CJA), 18 U.S.C. § 3006A, now requires that the amounts paid to court appointed attorneys be made publicly available upon the court's approval of the payments. The court may disclose an unredacted copy of a payment voucher submitted by defense counsel, or a redacted copy of a voucher indicating only the amounts approved for payment according to categories of services listed in the statute. (The text of the new statutory provision is set forth at 18 U.S.C. § 3006A(d)(4)). The extent of disclosure depends on whether the case is pending and on whether the court determines that certain interests (enumerated in subpart (d)(4)(D) of the CJA and listed below in part B.1) require the redacting of detailed information on the voucher. Upon court approval of a voucher claim, payment information will be made available as follows:

A. BEFORE OR DURING THE TRIAL: After redacting any detailed information provided to justify the expenses, the court shall make available to the public only the amounts approved for payment. Upon the completion of trial, unredacted copies of the vouchers may be released, depending on whether an appeal is being pursued and whether the court determines that one or more of the interests listed in part B.1 require the redaction of the information.

B. AFTER THE TRIAL IS COMPLETED. The court shall make available to the public either redacted or unredacted vouchers as follows:

1. If trial court proceedings have been completed and appellate review is not being pursued or has concluded at the time payment is approved: The court shall make an unredacted copy of the payment voucher available to the public unless it determines that one or more of the interests listed below justify limiting disclosure to the amounts approved for payment in the manner described in part A. The interests that may require limiting disclosure include:

- (1) the protection of any person's 5th Amendment right against self-incrimination;
- (2) the protection of the defendant's 6th Amendment rights to effective assistance of counsel;
- (3) the defendant's attorney-client privilege;
- (4) the work product privilege of the defendant's counsel;
- (5) the safety of any person; and
- (6) any other interest that justice may require.

2. If appellate review is being pursued at the time payment is approved. The court shall make available to the public only the amounts approved for payment in the manner described in part A unless it finds that non of the interests listed above in part B.1 will be compromised.

C. AFTER THE APPEAL IS COMPLETED: The court shall make an unredacted copy of the payment voucher available to the public unless it determines that one or more of the interests listed in part B.1 justify limiting disclosure to the amounts approved for payment in the manner described in part A.

If counsel believes that any of the interests listed above in part B.1 justify limiting disclosure to the amounts approved for payment, counsel should submit to the court a written request, identifying the interests at risk and the arguments made in support of providing protection, AT OR BEFORE THE TIME A CLAIM FOR PAYMENT IS MADE. Failure to do so could result in the public availability of unredacted copies of your vouchers without further notice.

This constitutes notice as required under 18 U.S.C. § 3006A(d)(4)(E). You may NOT receive additional notice before any payment information is made available to the public.